

## REMARKS

Claims 1-50, 52-57, 59-64, 66-69, and 71-73 are presently pending in the case. Claims 51, 58, 65, and 70 have been cancelled because the limitations therein have been written into the claims from which they depend. Claims 1, 14, 17, and 21 have been amended merely by incorporating the limitation of dependent claims thereinto. Accordingly, all independent claims presently submitted were previously pending.

Reconsideration of the present case in view of the above amendments and the remarks herein is requested.

### **Claim rejections under 35 USC 103(a)**

The Examiner rejected claims 1-7, 12, 14-19, 30-33, 50-52, 57-59, and 64-66 under 35 USC 103(a) as being unpatentable over U.S. Patent 4,147,618 to Richardson et al (hereinafter Richardson et al). The rejection is traversed.

Richardson et al does not render claims 1-7, 12, 14-19, 30-33, 50-52, 57-59, and 64-66 unpatentable. Claim 1, for example, is to a method for measuring the mass of a powder substance, the method comprising, inter alia, applying energy to a powder substance which comprises a pharmaceutical agent, wherein the powder substance comprises particles having a mass median diameter from about 0.1  $\mu\text{m}$  to about 100  $\mu\text{m}$ . Richardson et al discloses measuring the mass of a propellant in an ammunition cartridge. Richardson et al does not disclose measuring the mass of a powder substance which comprises a pharmaceutical agent, wherein the powder substance comprises particles having a mass median diameter from about 0.1  $\mu\text{m}$  to about 100  $\mu\text{m}$ . Furthermore, it would not have been obvious for one of ordinary skill in the art to modify Richardson et al to arrive at the presently claimed invention, as proposed by the Examiner, particularly in the absence of any suggestion to do so. Therefore, Richardson et al does not render the claim unpatentable, and it is requested that the rejection be withdrawn.

Claim 14 is also not rendered unpatentable by Richardson et al. Claim 14 is to a method comprising, inter alia, filling a metering chamber defining a certain volume with a powder substance which comprises a pharmaceutical formulation, wherein the powder substance comprises particles having a mass median diameter from about 0.1  $\mu\text{m}$  to about 100  $\mu\text{m}$ .

Richardson et al does not disclose a powder substance as claimed as discussed above and does not render the claim unpatentable.

Additionally, claim 17 is not rendered unpatentable by Richardson et al. Claim 17 recites "directing a beam of light onto a powder substance which comprises a pharmaceutical agent, wherein the powder substance comprises particles having a mass median diameter from about 0.1  $\mu\text{m}$  to about 100  $\mu\text{m}$ ." Richardson et al does not disclose directing a beam of light onto a powder substance which comprises a pharmaceutical formulation and wherein the powder substance comprises particles having a mass median diameter from about 0.1  $\mu\text{m}$  to about 100  $\mu\text{m}$ . Accordingly, the rejection of claim 17 as being unpatentable over Richardson et al should be removed.

Richardson et al does not render claim 21 unpatentable, either. Claim 21 includes the step of "filling the chamber with a powder substance which comprises a pharmaceutical formulation, wherein the powder substance comprises particles having a mass median diameter from about 0.1  $\mu\text{m}$  to about 100  $\mu\text{m}$ ". This step is not disclosed or suggested by Richardson et al. Thus, Richardson et al does not anticipate the claim.

Independent claims 30 and 39 are also not rendered unpatentable by Richardson. Claim 30 is to a system comprising, inter alia, a metering chamber that is adapted to receive a powder substance and a cavity for receiving the powder substance when it is ejected from the metering chamber. Richardson et al does not disclose a system as claimed. In the Richardson et al system, propellant for ammunition is filled directly into a cartridge. Richardson et al does not disclose a metering chamber, as claimed. Furthermore, if the cartridge of Richardson et al is considered to be a metering chamber, then Richardson et al does not disclose a cavity, as claimed. Like claim 30, claim 39 recites the combination of a metering chamber and a cavity. Since Richardson et al does not disclose all features claimed, it does not render claim 30 or claim 39 unpatentable.

Claims 2-13 depend from claim 1; claims 15 and 16 depend from claim 14; claims 18-20 depend from claim 17; claims 22-29 depend from claim 21; claims 31-38 depend from claim 30; and claims 40-49 depend from claim 39. Since each of these claims includes all of the limitations of the claim from which it depends, these claims are also not anticipated by Richardson et al. In addition, claims 2-13, 15, 16, 18-20, 22-29, 31-38 and 40-49 recite other features that further distinguish the claims.

**Further claim rejections under 35 USC 103(a)**

The Examiner rejected claims 8-11, 13, 20-29, 34-38, 40-49, 53-56, 60-63, and 67-73 under 35 USC 103(a) as being unpatentable over Richardson et al in view of GB 2077422 to Pryor et al (hereinafter Pryor et al), U.S. Patent 4,461,363 to Loy (hereinafter Loy), U.S. Patent 3,744,582 to Withnell et al (hereinafter Withnell et al), U.S. Patent 4,640,376 to Hinzpeter (hereinafter Hinzpeter), and U.S. Patent 4,825,454 to Annis et al (hereinafter Annis et al). The rejection is traversed.

Richardson et al, when taken with Pryor et al, Loy, Withnell et al, Hinzpeter, and Annis et al does not render the presently claimed invention unpatentable. Richardson et al does not disclose or suggest the invention as separately set forth in the independent claims, as discussed above. The claims are also not rendered obvious by Richardson et al, in view of Pryor et al, Loy, Withnell et al, Hinzpeter, and Annis et al. Moreover, one of ordinary skill in the art would not have been motivated to modify Richardson et al based on the teachings of each of Pryor et al, Loy, Withnell et al, Hinzpeter, and Annis et al, as suggested by the Examiner. Accordingly, Applicant requests withdrawal of the rejection.

**Claim Amendments**

Claims 1, 14, 17, and 21 have been amended only to incorporate the limitations of previously pending claims 51, 58, 65, and 70, respectively. These amendments have not been made for reasons related to patentability and the scope of previously pending claims 51, 58, 65, and 70 has not been changed.

**Conclusion**

The Examiner is respectfully requested to consider and allow the presently pending claims. Should the Examiner have any questions, the Examiner is requested to call the undersigned at the number given below.

Respectfully submitted,

NEKTAR THERAPEUTICS  
(formerly INHALE THERAPEUTIC  
SYSTEMS)

Dated: 14 JUN 2004

By: 

Guy V. Tucker  
Reg. No. 45,302

Please send all correspondence to:  
Guy Tucker  
Nektar Therapeutics  
(formerly Inhale Therapeutic Systems, Inc.)  
150 Industrial Road  
San Carlos, CA 94070  
Phone: (650) 620-5501  
Fax: (650) 631-3125